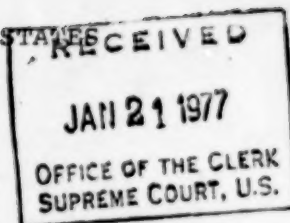


IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1976



76-180 J. HENRY SMITH, etc. et al.,  
-against-  
ORGANIZATION OF FOSTER FAMILIES FOR EQUITY AND  
REFORM, etc. et al.,  
Appellants-Defendants,  
Appellees.

76-183 BERNARD SHAPIRO, etc. et al.,  
-against-  
ORGANIZATION OF FOSTER FAMILIES FOR EQUITY AND  
REFORM, etc. et al.,  
Appellants-Defendants,  
Appellees.

76-5193 NAOMI RODRIGUEZ, etc. et al.,  
-against-  
ORGANIZATION OF FOSTER FAMILIES FOR EQUITY AND  
REFORM, etc. et al.,  
Appellants-Intervenors,  
Appellees.

76-5200 DANIELLE and ERIC GANDY, etc. et al.,  
-against-  
ORGANIZATION OF FOSTER FAMILIES FOR EQUITY AND  
REFORM, etc. et al.,  
Appellants-Plaintiffs,  
Appellees.

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF NEW YORK

APPELLANTS' JOINT MEMORANDUM IN OPPOSITION TO  
MOTION OF A GROUP OF CONCERNED PERSONS FOR  
CHILDREN FOR LEAVE TO FILE BRIEF AMICI CURIAE

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IN THE

-against-

-against-

-against-

-against-

APPELLANTS' JOINT MEMORANDUM IN OPPOSITION TO  
MOTION OF A GROUP OF CONCERNED PERSONS FOR  
CHILDREN FOR LEAVE TO FILE BRIEF AMICI CURIAE

Appellants-plaintiffs Danielle and Eric Gandy, et al.,

POINT I

AN AMICUS CURIAE BRIEF MAY NOT BE  
USED BY WITNESSES FOR A PARTY TO  
EXPAND THEIR TESTIMONY AT TRIAL

An attempt by witnesses testifying for a party\* to

Nor are movants helped by their assertion that their

\* Joseph Goldstein and Albert J. Solnit were witnesses for the appellee foster parents in the proceeding in United States District Court for the Southern District of New York. Examinations before trial were taken of them on April 1, 1975 and May 13, 1975.

\*\* Appendix, pp. 172a, 173a, 181a, 182a, 255a, 258a.

particular psychiatric view, and their testimony must be assessed by this Court on the basis of their lengthy testimony and answers on cross-examination, not in the form of a purported amicus curiae brief.

## POINT II

### WITNESSES FOR A PARTY CANNOT SUBSEQUENTLY APPEAR AS "FRIENDS OF THE COURT"

Drs. Goldstein and Solnit had no mere tangential involvement in the court below as witnesses on behalf of appellees. Their testimony covers more than 300 pages, and was the basis for appellees' theories and claims about the foster care relationship. The fact that they now call themselves "friends of the court" cannot alter the adversarial and partisan views which they continue to offer. Mr. Justice Frankfurter stated in Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 581 (1946):

"Amici selected by the court to vindicate its honor ordinarily ought not be in the service of those having private interests in the outcome."\*

The standing and duties of an amicus have been well defined in the law. Amicus curiae is a Latin phrase for "friend of the court" as distinguished from an advocate before the court. Allen v. County School of Prince Edward County, 28 F.R.D. 358, 362 (E.D. Va., 1961); Clark v. Sandusky, 205 F. 2d 915 (7th Cir. 1953).

\* Foster parents generally receive at least \$155.00 per month under their contracts with public or private agencies for the care of each child. Transcript of Record in the District Court, Docket Item No. 84, pp. 87-89.

Indeed, the Canons of Ethics suggest that an attorney cannot be both witness and advocate in a case since the function of counsel is to advance a cause, while that of a witness is to state facts objectively.\* Dr. Goldstein is both counsel for all movants, himself a movant, and was a witness for appellees.

It is clear that movants cannot satisfy the criteria for amici curiae. Their involvement with appellees, as witnesses and as members of appellees' Advisory Board,\*\* also places them in a conflict of interest with the children for whom they wish to speak.\*\*\*

## POINT III

### THE PROPOSED AMICUS BRIEF ATTEMPTS TO OVERTURN THIS COURT'S DENIAL OF ADDITIONAL COUNSEL TO REPRESENT THE FOSTER CHILDREN

This Court on November 15, 1976, denied a motion by appellees to have additional counsel appointed to represent appellant foster children. The proposed amici wish to speak for the foster children herein, arguing that Helen L. Buttenwieser's appointment as counsel for such children "did not make her their exclusive spokesman" (p. 9). This Court has already ruled adversely on the appropriateness of additional spokesmen.

\* American Bar Association Code of Professional Responsibility, Canon 5, EC 5-9, p. 19C.

\*\* Joseph Goldstein, Anna Freud, and Albert J. Solnit are on the Advisory Board of appellee Organization of Foster Families for Equality and Reform (p. iv).

\*\*\* The conflict between the foster children and the foster parents was set out in an opinion of the District Court dated December 10, 1974 (appellants' Joint Appendix to Jurisdictional Statements, pp. 61a-68a).



CONCLUSION

FOR ALL THE FOREGOING REASONS, THE  
MOTION OF THE GROUP OF CONCERNED  
PERSONS FOR CHILDREN FOR LEAVE TO  
FILE A BRIEF AMICI CURIAE SHOULD BE  
DENIED.

Dated: New York, New York  
January 20, 1977

Respectfully submitted,

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